

REMARKS

Receipt of the office action mailed April 30, 2007 is acknowledged. Claims 1-16 are pending in the application. Claims 1, 2, 4, 6, 8, 11, 13, and 14 have been rejected as obvious over Beck in view of Kobayashi. Claims 3, 9 and 10 have been rejected as obvious over Beck in view of Kobayashi and further in view of Crawley. Claims 5, 7 and 12 have been rejected as obvious over Beck in view of Kobayashi and further in view of Brown. Claim 15 has been rejected as obvious over Beck in view of Kobayashi and further in view of Hayward. In view of the above amendment and the following argument, applicant respectfully requests reconsideration and allowance.

Claim 1 has been amended to recite, in part, that the superstructure is arranged to contact stops to limit the rotation of the superstructure to no more than 300° of rotation. By comparison, Beck expressly teaches that the cab must be able to rotate through a range of 360°. The Beck reference states that “it is a primary object of the present invention” to have “a cab that rotates a complete revolution of three hundred sixty degrees.” Col. 1, line 65, to col. 2, line 2. See also col. 4, lines 58-63, as well as independent claims 1, 11 and 16. Therefore, there would be no proper suggestion to limit the cab rotation of Beck in order to reach the claimed invention, because such a modification would destroy the express teachings of the reference. Further, the Kobayashi reference teaches nothing of relevance with respect to the above-identified limitation. Consequently, Beck cannot support a proper *prima facie* case of obviousness with respect to claim 1 as amended, and claim 1 is in allowable form for at least this reason.

As far as the Crawley reference is concerned, whatever the reference teaches, the reference still cannot be used in a manner that would destroy the express teachings of Beck. Further, the Figure and passage cited by the action relates to detents or stops for a rotating seat and a rotary switch valve. The reference offers nothing of value relating to a wheeled backhoe/loader having a rotating cab and a pivoting or slew arm with the rotational limitation as claimed by claim 1. The remaining art of record adds nothing of relevance.

Moreover, Beck and Kobayashi are not properly combinable in any event. Beck is a wheeled backhoe/loader having a bucket on one end and a backhoe on the other, and appropriate means for steering the device. One seeking the solution to improvements in

wheeled backhoe/loaders of the type shown in Beck simply would not look to a backhoe mounted on a track-driven swivel deck of the type shown in Kobayashi for the solution to problems relating to packaging a wheeled backhoe/loader for use in a tight environment. Non-analogous art cannot be used to support a *prima facie* case of obviousness. Consequently, there would be no suggestion to look to Kobayashi in any event, and therefore the references are not properly combinable. Claim 1 is allowable for this reason as well.

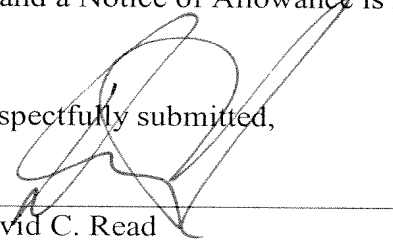
Claims 2-8 and 11-16 are also in allowable form.

New claim 19 positively recites an excavating and loading machine comprising a body having a front end and a rear end, the body carried on a steerable wheeled ground engaging structure, a loading arm assembly mounted on the body and extending forwardly of the body, a superstructure including an operator's cab, the superstructure mounted to the body and rotatable about a generally upright first axis relative to the body, an excavating arm mounted on a superstructure by a mounting which permits the arm to slew relative to the superstructure about a generally upright slew axis and also to permit the arm to be raised and lowered about a generally horizontal axis, and wherein the superstructure is arranged to abut stops in order to limit the range of rotation of the superstructure relative to the body to less than 360°. Claim 19 is allowable for the same reasons outlined above with respect to claim 1. Dependent claim 20 also is in allowable form.

The application is now in allowable form, and a Notice of Allowance is respectfully requested.

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Respectfully submitted,

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